



City of Tacoma, WA

**PUBLIC WORKS ENGINEERING
REQUEST FOR QUALIFICATIONS
PAVEMENT CONDITION ASSESSMENT
SPECIFICATION NO. PW22-0250F**



**CITY OF TACOMA
PUBLIC WORKS DEPARTMENT**

REQUEST FOR QUALIFICATIONS

PAVEMENT CONDITION ASSESSMENT

SPECIFICATION NO. PW22-0250F

**ERIK SLOAN
PAVEMENT MANAGER
PUBLIC WORKS DEPARTMENT**



**City of Tacoma
Public Works Engineering**

**REQUEST FOR QUALIFICATIONS
PW22-0250F
Pavement Condition Assessment**

Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, September 6, 2022

Submittals must be received by the City's Procurement and Payables Division prior to 11:00 a.m. Pacific Time. For electronic submittals, the City of Tacoma will designate the time of receipt recorded by our email, bids@cityoftacoma.org, as the official time of receipt. This clock will be used as the official time of receipt of all parts of electronic bid submittals.

Submittal Delivery: Sealed submittals will be received as follows:

By Email:

bids@cityoftacoma.org

Maximum file size: 35 MB. Multiple emails may be sent for each submittal.

Bid Opening: Held virtually each Tuesday at 11AM. Attend [via this link](#) or call 1 (253) 215 8782.

Submittals in response to a RFQ will be recorded as received. As soon as possible, after 1:00 PM, on the day of submittal deadline, preliminary results will be posted to www.TacomaPurchasing.org.

Solicitation Documents: An electronic copy of the complete solicitation documents may be viewed and obtained by accessing the City of Tacoma Purchasing website at www.TacomaPurchasing.org.

- [Register for the Bid Holders List](#) to receive notices of addenda, questions and answers and related updates.
- Click here to see a [list of vendors registered for this solicitation](#).

Pre-Proposal Meeting: A pre-proposal meeting will not be held.

Project Scope: Gather current data about the City's street network by a professional engineering consultant. Data will be used to aid with future maintenance and capital project planning and to assess progress toward Streets Initiative goals. The consultant will also assist with getting the new data into a GIS based pavement management system and make recommendations about the City's maintenance programs to ensure cost-effectiveness.

Estimate: \$500,000

Paid Sick Leave: The City of Tacoma requires all employers to provide paid sick leave as set forth in Title 18 of the Tacoma Municipal Code. For more information, visit [our Minimum Employment Standards Paid Sick Leave webpage](#).

Americans with Disabilities Act (ADA Information): The City of Tacoma, in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. Specification materials can be made available in an alternate format by emailing Gail Himes at ghimes@cityoftacoma.org, or by calling her collect at 253-591-5785.

Title VI Information:

"The City of Tacoma" in accordance with provisions of Title VI of the Civil Rights Act of 1964, (78 Stat. 252, 42 U.S.C. sections 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration of award.

Additional Information: Requests for information regarding the specifications may be obtained by contacting Tina Eide, Senior Buyer by email to teide@cityoftacoma.org.

Protest Policy: City of Tacoma protest policy, located at www.tacomapurchasing.org, specifies procedures for protests submitted prior to and after submittal deadline.



Meeting sites are accessible to persons with disabilities. Reasonable accommodations for persons with disabilities can be arranged with 48 hours advance notice by calling 253-502-8468.

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- SIGNATURE PAGE


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- INSURANCE REQUIREMENTS
- SAMPLE - CONTRACT

SUBMITTAL CHECK LIST

This checklist identifies items to be included with your submittal. Any submittal received without these required items may be deemed non-responsive and not be considered for award.

Submittals must be received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Qualifications page.

The following items make up your submittal package:	
One (1) electronic file (PDF format) arranged in the sequence listed in Section 11 (SOQ Submittal Content) labeled with the specification title and number.	
Signature Page (Appendix A)	
Information in Section 11 (Revise as necessary e.g. Content To Be Submitted)	
<p style="text-align: center;">DELIVERY OPTIONS TO THE CITY OF TACOMA PROCUREMENT AND PAYABLES DIVISION <u>By Email:</u></p> <p style="text-align: center;">bids@cityoftacoma.org</p> <p style="text-align: center;"><u>Maximum file size: 35 MB. Multiple emails may be sent for each submittal</u></p>	
After award, the following documents will be executed and provided:	
Contract	
Certificate of Insurance and related endorsements	

1. BACKGROUND

The City of Tacoma (City) is requesting qualifications from interested parties to perform a pavement condition assessment and update the City's pavement management system.

The assessment will be a full survey of the approximately 762 centerline miles of streets within the City limits. The pavement management services provided through this project will help the City identify various preservation and rehabilitation strategies, help address deferred maintenance and reconstruction backlogs, and put the City on a sustainable path toward improved network conditions.

The City uses Lucity as its pavement management system but needs to upgrade or replace it and is seeking recommendations for new platforms that incorporate pavement and other transportation assets (striping, signs, sidewalks, ramps, etc.).

To learn more about the City of Tacoma, visit www.cityoftacoma.org.

Qualifications submitted and/or the selected Consultant(s) may be used for projects of similar type and scope at the sole discretion of the City for up to one year.

2. STANDARD TERMS AND CONDITIONS

City of Tacoma [Standard Terms and Conditions](#) apply.

3. SUMMARY OF SCOPE OF SERVICES AND DELIVERABLES

It is the City's intent to select a consultant based on qualifications and abilities of the firm and key project individuals for the following scope of work and deliverables:

NOTE: All GIS data must be developed using Esri technology and delivered in Esri File Geodatabase format.

- I. Develop a quality management plan to ensure consistency and repeatability of the assessment.
- II. Review the current street network in ArcGIS to update street segments and merge Federal classifications into dataset.
- III. Review historical maintenance records to ensure they are accurately incorporated into the dataset.
- IV. Perform an automated pavement condition assessment on approximately 762 miles of City streets to identify pavement distresses and existing street conditions.
 - a. ASTM D6433 standards will be followed.
 - b. Data to be collected with a Road Surface Tester (RST) equipped with Laser Crack Measuring System (LCMS-2) 3D pavement surface imaging technology.
 - c. Data collection should be scheduled to minimize impacts of traffic congestion. Seasonal and daily sun angle should be considered during routing to ensure acceptable image quality. Data should not be collected when the visibility of cracking and other distresses are obscured by conditions. Data collection should not take place if there is precipitation falling, if the roadway is wet, or if there is visible precipitation such as snow, ice, hail, standing water, etc., on the roadway.

- d. Two passes (one in each direction) shall be made on arterials and one on residential (local) streets.
 - e. Continuous, full lane-width rutting measurements will be collected
 - f. Continuous, full lane-width International Roughness Index values will be developed
- V. Deflection Testing will be performed by the consultant with a Fast Falling Weight Deflectometer or Dynaflect on all City-classified arterial streets (approximately 237 miles).
 - a. Two passes (one in each direction).
 - b. A structural index will be calculated and included as a component in each segment's overall condition score.
- VI. Determine a Pavement Condition Index (PCI) for each segment following ASTM D6433.
 - a. No sampling methods will be used to determine PCI values – all data collected will be analyzed.
- VII. Pavement imagery and condition data will be georeferenced, linked to segments, and provided to the City.
- VIII. Provide a technical report describing the pavement condition assessment methodology, summary of current conditions, and preliminary recommendations.
- IX. Review the City's pavement management system and provide recommended options for upgrading or replacing the system.
 - a. Any recommended options must be compatible with ArcGIS.
- X. Deliver an export file of pavement conditions and upload complete dataset into a new pavement management system approved by the City.

4. ANTICIPATED CONTRACT TERM

The anticipated duration of the contract is for a one-year period with an option to extend for an additional two, one-year terms upon mutual consent of both parties.

5. CALENDAR OF EVENTS

The following schedule has been established for the submission and evaluation of the SOQs and selection of the Consultant. These are tentative dates only and the City reserves the right to adjust these dates at its sole discretion.

Contract may be issued after City Council approval.

The anticipated schedule of events concerning this Solicitation is as follows:

Publish and issue Solicitation:	8/15/2022
Pre-Submittal Questions:	8/22/2022
Response to Questions:	8/25/2022
Submittal Due Date:	9/06/2022
Submittal Evaluated, on or about:	9/13/2022
Interviews/presentations, on or about:	N/A
Award Recommendation, on or about:	9/20/2022
City Council Approval, on or about:	10/11/2022

6. INQUIRIES

Questions and request for clarifications may be submitted in writing by 3:00 p.m., PST, Monday, August 22, 2022, to Tina Eide, Purchasing Division, via email to teide@cityoftacoma.org. No further questions will be accepted after this date and time. The City of Tacoma will not be responsible for unsuccessful submittal of questions via email.

Written answers to all questions submitted will be posted on the Purchasing website at www.TacomaPurchasing.org on or about August 25, 2022. The City reserves the discretion to group similar questions to provide a single answer or not to respond when the information is confidential. The answers are not typically considered an addendum.

7. DISCLAIMER

The City is not liable for any costs incurred by the Respondent for the preparation of materials, or a submittal submitted in response to this Solicitation, for conducting any presentations to the City, or any other activities related to responding to this Solicitation or related to the contract negotiation process.

8. EVALUATION CRITERIA

A Selection Advisory Committee (SAC) consisting of City staff and other stakeholders, as appropriate, shall independently evaluate the SOQs. After the evaluation, the SAC may conduct interviews of the most qualified Respondents before final selection.

- 8.1** The SAC may select one or more respondent to provide the services required.
- 8.2** The City reserves the right to visit facilities of selected Respondents for the purpose of ensuring quality control.
- 8.3** The SAC may use references to clarify information in the submittals and interviews, if conducted, which may affect the rating. The City reserves the right to contact references other than those included in the submittal.
- 8.4** Part 1 of the evaluation process shall consist of the evaluation of the written Statement of Qualifications (SOQ) package submitted by each Proposer and as a result, a short list of Proposers may be invited to interview with the SAC.
- 8.5** Part 2 of the evaluation process will evaluate the interviews, if conducted, to produce a final rating. The City reserves the right to select the Consultant team directly from the SOQs (Part 1 evaluation) without conducting an interview.

9. RESPONSIVENESS

Respondents agree their submittal is valid until a contract(s) has been executed.

All submittals will be reviewed by the City to determine compliance with the requirements and instructions specified in this Solicitation. The Respondent is specifically notified that failure to comply with any part of this Solicitation may result in rejection of the submittal as non-

responsive. The City reserves the right, in its sole discretion, to waive irregularities deemed immaterial.

The final selection, if any, will be that submittal which, after review of submissions and potential interviews, in the sole judgement of the City, best meets the requirements set forth in this Solicitation.

10. SOQ SUBMITTAL AND GENERAL GUIDELINES

The SOQ should be submitted in PDF format. The City recommends that the Proposer's SOQ submittals be limited to no more than 16 double-sided pages (not including City of Tacoma required forms).

11. CONTENT TO BE SUBMITTED – This section represents 100% of the possible scoring criteria.

Respondents are to provide complete and detailed responses to all items below. Submittals that are incomplete or conditioned in any way that contain alternatives or items not called for in this Solicitation, which materially deviate from the requirements of this Solicitation or which are not in conformity with law, may be rejected as being non-responsive.

Submittals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the Respondent's abilities to meet the requirement of this Solicitation. Emphasis will be on completeness of content. The written submittals should be prepared in the sequential order as outlined below.

The City reserves the right to request clarification of any aspect of a submittal or request additional information that might be required to properly evaluate the submittal. Failure to respond to such a request may result in rejection of the firm's submittal. Respondents are required to provide responses to any request clarification within two (2) business days.

Requests for clarification or additional information shall be made at the sole discretion of the City. The City's retention of this right shall no way diminish a Respondent's responsibility to submit a submittal that is current, clear, complete, and accurate.

The relative weight of each scoring criteria is indicated in the table below.

Criteria	Max Points
Qualifications/Experience of Respondent	35
Project Manager and Personnel Qualifications and Experience	25
Proposed Process, Team Availability and Anticipated Schedule	20
Client References	10
Sustainability	5
Equity in Contracting	5
Total	100

11.1 Qualifications/Experience of Respondent – 35 points

Please provide information on the Respondent's structure, qualifications and experience including:

- Names of lead persons with titles and general project responsibilities.
- Names of all sub-consultant personnel and general responsibilities.
- Corporate organizational structure showing the relationship to parent and/or subsidiary companies. If the Proposer is a subsidiary of a parent company, state when the subsidiary was formed and its place in the corporate structure of the parent company. Summary of the background and experience of the firm relative to the project under consideration.
 - Include lists of specific projects, of similar type, on which the firm and team members have had a major role together with the location, cost, and basic description of the project, start and completion dates, the names of the client, description of the firm's responsibility on the project, and the specific roles of the individuals proposed for this project.
 - Describe experience working with municipal or other public agencies.
 - Describe the firm's experience/familiarity with the City of Tacoma,
 - Provide a description of any special projects, awards, certifications, or other items that make the firm especially qualified for this submittal.

11.2 Project Manager and Personnel Qualifications and Experience – 25 points

Please provide the following information on the proposed project personnel and experience, which qualify them to perform work on the project.

- Qualifications of Project Manager
 - Identify the project manager who will have overall responsibility for the project.
 - Include professional biographical data and/or resume outlining specific project capabilities.
- Qualifications of the Firm's Personnel
 - List the lead personnel, with titles, who will be primarily responsible for and involved with daily work activities.
 - Identify the responsibilities and activities of each lead person.
 - Include professional biographical data and/or resume outlining specific project capabilities.

11.3 Proposed Process, Team Availability and Anticipated Schedule – 20 points

- Describe the firm's process and/or approach to accomplishing the proposed scope of work.
- Describe the firm's process for Quality Assurance/Quality Control (QA/QC).
- Confirm the availability of the firm and sufficient resources to perform the consulting services in view of the firm's current and projected workload.
- Provide level of effort and availability of the firm's project manager and lead project personnel for this project.
- Provide a conceptual project schedule for completing the consultant services.

11.4 Client References – 10 points

References shall be used to verify the accuracy of the information provided by the Proposer, which may affect the rating of the Proposer. The City reserves the right to

contact references other than those submitted by the Proposer. Please provide the following:

- **Firm References**
 - Provide five (5) recent references who may be contacted concerning your firm's performance regarding the qualifications listed in the SOQ. In listing the references, include the name of the client, mailing address, fax number, telephone number, email address, contact person, and specific work your firm provided for the client.
- **Project Team References**
 - Provide three (3) recent references who may be contacted concerning the performance of key staff on your firm's proposed project team. Provide email address and telephone number for each reference.

11.5 Sustainability – 5 points

The City is committed to minimizing carbon emissions, air and water pollution, and the human health hazards associated with building construction and operations.

- Please demonstrate your firm's commitment to providing the services identified in the scope of work in a sustainable manner. What measures will your firm take to minimize impacts to the environment in the delivery of services? Please provide details of efforts, practices and/or processes.
- Please demonstrate your firm's commitment to sustainable business practices, which could include, but is not limited to a formal sustainability program and/or policies covering recycling measures and energy conservation plans.

11.6 Equity in Contracting – 5 points

Is Respondent, or any entity Respondent is partnering with, certified with Washington State for any of the below categories (select all that apply)? Selecting any item below will award all points for this category.

- ☐ Combination Business Enterprise (CBE)
- ☐ Disadvantaged Business Enterprise (DBE)
- ☐ Minority Business Enterprise (MBE)
- ☐ Minority/Women Business Enterprise (MWBE)
- ☐ Small Business Enterprise (SBE)
- ☐ Socially and Economically Disadvantaged Business Enterprise (SEDBE)
- ☐ Women Business Enterprise (WBE)

12. INTERVIEWS / ORAL PRESENTATIONS

If interviews are conducted, the SAC will schedule the interviews using the email address for communications provided on the signature page. Additional interview information will be

provided at the time of invitation. At this time, it is anticipated that the main objective of the interview will be for the SAC to meet the project manager and key personnel that will have direct involvement with the project and hear about their relevant experience and expertise. The City does not intend to meet with firm officials unless they are to be directly involved with the project.

The relative weight of each Part 2 criterion is indicated in the table below.

Criteria	Max Points
Presentation by finalist	50
Interview / Questions and Answers	50
Total	100

13. CONTRACT OBLIGATION

The selected Respondent(s) will be expected to execute a Contract with the City. At a minimum, any contract will incorporate the contents of this specification, including all stated services or deliverables and other requirements and the City of Tacoma Standard Terms and Conditions, together with the contents of Respondent's submittal. The submittal contents of the successful Respondent will become contractual obligations

14. FORM OF CONTRACT

In event the City's Services Contract or other City Contract template is attached to this RFP as a sample form of Contract, the City expects to utilize the Terms and Conditions contained in the sample form of Contract. Post award negotiation may occur at the discretion of the City. Respondents should clearly state exceptions to City's Standard Terms and Conditions as well as to the Terms and Conditions contained in any attached sample form of Contract and to any other portions of this RFP, including the stated Insurance Requirements. Respondents may also propose to utilize their own form of Contract and in such instances. Respondent must provide its form of Contract as part of its submittal. City, at its sole option, will decide whether engage in negotiation on any or all proposed exceptions. City reserves sole discretion to determine the final form of Contract that will be used.

15. INSURANCE REQUIREMENTS

Successful proposer will provide proof of and maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements contained in this solicitation.

16. PARTNERSHIPS

The City will allow Respondents to partner in order to respond to this Solicitation. Respondents may team under a Prime Respondent's submittal in order to provide responses to all sections in a single submission; however, each Respondent's participation must be clearly delineated by section. The Prime Respondent will be considered the responding vendor and the responsible party at contract award. Any contract negotiations will be conducted only with the Prime Respondent. All contract payments will be made only to the Prime Respondent. Any agreements between the Prime Respondent and other companies will not be a part of the

agreement between the City and the Prime Respondent. The City reserves the right to select more than one Prime Respondent.

17. COMMITMENT OF FIRM KEY PERSONNEL

The Respondent agrees that key personnel identified in its submittal or during contract negotiations as committed to this project will, in fact, be the key personnel to perform during the life of this contract. Should key personnel become unavailable for any reason, the selected Respondent shall provide suitable replacement personnel, subject to the approval of the City. Substantial organizational or personnel changes within the agency are expected to be communicated immediately. Failure to do so could result in cancellation of the Contract

18. AWARD

The final rating will be the total SAC scoring from Part 1 and Part 2 of the evaluation process. Note: If the interviews are not held, the respondent who earned the highest points in Part 1 evaluation scoring will be selected.

After the Respondent(s) is selected by the SAC and prior to award, all other Respondents will be notified via the Purchasing Division using the email address for communications provided on the signature page.

Once a Respondent(s) has been selected for award by the SAC, contract negotiations will begin. If a contract with the selected Respondent(s) is not successfully negotiated in that the City's final offer is not accepted, the City may, in its sole discretion discontinue contract negotiations and commence negotiations with another Respondent. When a contract is successfully negotiated, the Contract will, if required, be submitted for final approval by the Public Utility Board and/or City Council.

If the selected Proposer and the City are unable to agree on a final scope of work and fee for the contract services, the City reserves the right to terminate the negotiations with the selected Proposer and initiate contract negotiations with the next highest rated Proposer.

19. SCOPE, BUDGET, AND SCHEDULE

The selected Proposer will meet with the City to review the project scope and timeline. Based on the meeting, the selected Proposer shall submit a draft scope, budget, and project schedule to the City within five (5) business days or as directed by the City's Project Manager. The scope and budget shall include an itemized list of tasks and include estimated hours for the proposed work. The budget shall be supported by a list of hourly rates for personnel to be utilized under this contract.

20. ENVIRONMENTALLY PREFERABLE PROCUREMENT

In accordance with the City's Sustainable Procurement Policy, it is the policy of the City of Tacoma to encourage the use of products or services that help to minimize the environmental and human health impacts of City Operations. Respondents are encouraged to incorporate environmentally preferable products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, products,

manufacturing, packaging, distribution reuse, operation, maintenance or disposal of the product or service.

The City of Tacoma encourages the use of sustainability practices and desires any awarded contractor(s) to assist in efforts to address such factors when feasible for:

- Reduction of pollutant releases
- Toxicity of materials used
- Waste generation
- Greenhouse gas emissions, including transportation of materials and services
- Recycle content
- Comprehensive energy conservation measures
- Waste reduction plans
- Potential impact on human health and the environment

21. EQUITY IN CONTRACTING

The City of Tacoma is committed to encouraging firms certified through the [Washington State Office of Minority and Women's Business Enterprise](#) to participate in City contracting opportunities. See the **TMC 1.07 Equity in Contracting Policy** at the City's [Equity in Contracting Program website](#).

22. PROPRIETARY OR CONFIDENTIAL INFORMATION

The Washington State Public Disclosure Act ([RCW 42.56 et seq.](#)) requires public agencies in Washington make public records available for inspection and copying unless they fall within the specified exemptions contained in the Act, or are otherwise privileged. Documents submitted under this RFP shall be considered public records and, with limited exceptions, will be made available for inspection and copying by the public.

For complete detail on Respondent's responsibility to identify and mark confidential information, and the applicability of the Public Disclosure Act, see the [Standard Terms and Conditions](#).

23. ADDENDUMS

In the event it becomes necessary to revise any part of this Solicitation, an addendum will be issued through the event in Ariba. Failure to acknowledge addendum(s) on the required Signature Page may result in a submittal being deemed non-responsive by the City.

24. SERVICES CONTRACT

A sample copy of the draft Service Contract is enclosed in Appendix B. Following contract negotiations, the contract shall be finalized between the City and the selected Consultant. The City reserves the right to amend the sample contract at the City's sole discretion.

APPENDIX A

Statement of Qualification Forms

- SIGNATURE PAGE

SIGNATURE PAGE

CITY OF TACOMA PUBLIC WORKS ENGINEERING

All submittals must be in ink or typewritten, executed by a duly authorized officer or representative of the bidding/proposing entity, and received and time stamped as directed in the **Request for Qualifications page near the beginning of the specification**. If the bidder/proposer is a subsidiary or doing business on behalf of another entity, so state, and provide the firm name under which business is hereby transacted.

REQUEST FOR QUALIFICATIONS SPECIFICATION NO. PW22-0250F PAVEMENT CONDITION ASSESSMENT

The undersigned bidder/proposer hereby agrees to execute the proposed contract and furnish all materials, labor, tools, equipment and all other facilities and services in accordance with these specifications.

The bidder/proposer agrees, by submitting a bid/proposal under these specifications, that in the event any litigation should arise concerning the submission of bids/proposals or the award of contract under this specification, Request for Bids, Request for Proposals or Request for Qualifications, the venue of such action or litigation shall be in the Superior Court of the State of Washington, in and for the County of Pierce.

Non-Collusion Declaration

The undersigned bidder/proposer hereby certifies under penalty of perjury that this bid/proposal is genuine and not a sham or collusive bid/proposal, or made in the interests or on behalf of any person or entity not herein named; and that said bidder/proposer has not directly or indirectly induced or solicited any contractor or supplier on the above work to put in a sham bid/proposal or any person or entity to refrain from submitting a bid/proposal; and that said bidder/proposer has not, in any manner, sought by collusion to secure to itself an advantage over any other contractor(s) or person(s).

Bidder/Proposer's Registered Name

Signature of Person Authorized to Enter Date
into Contracts for Bidder/Proposer

Address

Printed Name and Title

City, State, Zip

(Area Code) Telephone Number / Fax Number

Authorized Signatory E-Mail Address

State Business License Number
in WA, also known as UBI (Unified Business Identifier) Number

E.I.No. / Federal Social Security Number Used on Quarterly
Federal Tax Return, U.S. Treasury Dept. Form 941

State Contractor's License Number
(See Ch. 18.27, R.C.W.)

E-Mail Address for Communications

Addendum acknowledgement #1_____ #2_____ #3_____ #4_____ #5_____

THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.

APPENDIX B

Insurance & Agreement

- INSURANCE REQUIREMENTS
- SAMPLE - CONTRACT



CITY OF TACOMA

INSURANCE REQUIREMENTS FOR CONTRACTS

The Contractor (Contractor) shall maintain at least the minimum insurance set forth below. By requiring such minimum insurance, the City of Tacoma shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Contract. Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

1. GENERAL REQUIREMENTS

The following General Requirements apply to Contractor and to Subcontractor(s) of every tier performing services and/or activities pursuant to the terms of this Contract. Contractor acknowledges and agrees to the following insurance requirements applicable to Contractor and Contractor's Subcontractor(s):

- 1.1. City of Tacoma reserves the right to approve or reject the insurance provided based upon the insurer, terms and coverage, the Certificate of Insurance, and/or endorsements.
- 1.2. Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by City of Tacoma.
- 1.3. Contractor shall keep this insurance in force during the entire term of the Contract and for Thirty (30) calendar days after completion of all work required by the Contract, unless otherwise provided herein.
- 1.4. Insurance policies required under this Contract that name "City of Tacoma" as Additional Insured shall:
 - 1.4.1. Be considered primary and non-contributory for all claims.
 - 1.4.2. Contain a "Separation of Insured provision and a "Waiver of Subrogation" clause in favor of City of Tacoma.
- 1.5. Section 1.4 above does not apply to contracts for purchasing supplies only.
- 1.6. Verification of coverage shall include:
 - 1.6.1. An ACORD certificate or equivalent.
 - 1.6.2. Copies of all endorsements naming the City of Tacoma as additional insured and showing the policy number.
 - 1.6.3. A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.
- 1.7. Liability insurance policies, with the exception of Professional Liability and Workers' Compensation, shall name the City of Tacoma and its officers, elected officials, employees, agents, and authorized volunteers as additional insured.
 - 1.7.1. No specific person or department should be identified as the additional insured.
 - 1.7.2. All references on certificates of insurance and endorsements shall be listed as "City of Tacoma".
 - 1.7.3. The City of Tacoma shall be additional insured for both ongoing and completed operations using Insurance Services Office (ISO) form CG 20 10 04 13 and CG 20



CITY OF TACOMA

INSURANCE REQUIREMENTS FOR CONTRACTS

37 04 13 or the equivalent for the full available limits of liability maintained by the Contractor irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract and irrespective of whether the Certificate of Insurance describes limits lower than those maintained by the Contractor.

- 1.8. Contractor shall provide a Certificate of Insurance for each policy of insurance meeting the requirements set forth herein when Contractor provides the signed Contract for the work to City of Tacoma. Contractor shall provide copies of any applicable Additional Insured, Waiver of Subrogation, and Primary and Non-contributory endorsements. Contract or Permit number and the City Department must be shown on the Certificate of Insurance.
- 1.9. Insurance limits shown below may be written with an excess policy that follows the form of an underlying primary liability policy or an excess policy providing the required limit.
- 1.10. Liability insurance policies shall be written on an "occurrence" form, except for Professional Liability/Errors and Omissions, Pollution Liability, and Cyber/Privacy and Security
- 1.11. If coverage is approved and purchased on a "Claims-Made" basis, Contractor warrants continuation of coverage, either through policy renewals or by the purchase of an extended reporting period endorsement as set forth below.
- 1.12. The insurance must be written by companies licensed or authorized in the State of Washington pursuant to RCW 48 with an (A-) VII or higher in the A.M. Best's Key Rating Guide www.ambest.com.
- 1.13. Contractor shall provide City of Tacoma notice of any cancellation or non-renewal of this required insurance within Thirty (30) calendar days.
- 1.14. Contractor shall not allow any insurance to be cancelled or lapse during any term of this Contract, otherwise it shall constitute a material breach of the Contract, upon which City of Tacoma may, after giving Five (5) business day notice to Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith; with any sums so expended to be repaid to City of Tacoma by Contractor upon demand, or at the sole discretion of City of Tacoma, offset against funds due Contractor from City of Tacoma.
- 1.15. Contractor shall be responsible for the payment of all premiums, deductibles and self-insured retentions, and shall indemnify and hold the City of Tacoma harmless to the extent such a deductible or self-insured retained limit may apply to the City of Tacoma as an additional insured. Any deductible or self-insured retained limits in excess of Twenty Five Thousand Dollars (\$25,000) must be disclosed and approved by City of Tacoma Risk Manager and shown on the Certificate of Insurance.
- 1.16. City of Tacoma reserves the right to review insurance requirements during any term of the Contract and to require that Contractor make reasonable adjustments when the scope of services has changed.



CITY OF TACOMA INSURANCE REQUIREMENTS FOR CONTRACTS

- 1.17. All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Contract and no additional payment will be made by City of Tacoma to Contractor.
- 1.18. Insurance coverages specified in this Contract are not intended and will not be interpreted to limit the responsibility or liability of Contractor or Subcontractor(s).
- 1.19. Failure by City of Tacoma to identify a deficiency in the insurance documentation provided by Contractor or failure of City of Tacoma to demand verification of coverage or compliance by Contractor with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 1.20. If Contractor is a State of Washington or local government and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be attached hereto and be incorporated by reference and shall constitute compliance with this Section.

2. CONTRACTOR

As used herein, "Contractor" shall be the Supplier(s) entering a Contract with City of Tacoma, whether designated as a Supplier, Contractor, Vendor, Proposer, Bidder, Respondent, Seller, Merchant, Service Provider, or otherwise.

3. SUBCONTRACTORS

It is Contractor's responsibility to ensure that each subcontractor obtain and maintain adequate liability insurance coverage. Contractor shall provide evidence of such insurance upon City of Tacoma's request.

4. REQUIRED INSURANCE AND LIMITS

The insurance policies shall provide the minimum coverages and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve Contractor from liability in excess of such limits.

4.1 Commercial General Liability Insurance

Contractor shall maintain Commercial General Liability Insurance policy with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate. The Commercial General Liability Insurance policy shall be written on an Insurance Services Office form CG 00 01 04 13 or its equivalent. Products and Completed Operations shall be maintained for a period of three years following Substantial Completion of the Work related to performing construction services.

This policy shall include product liability especially when a Contract solely is for purchasing supplies. The Commercial General Liability policy shall be endorsed to include:

- 4.2 A per project aggregate policy limit, using ISO form CG 25 03 05 09 or an equivalent endorsement.

4.3 Commercial (Business) Automobile Liability Insurance

Contractor shall maintain Commercial Automobile Liability policy with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage and bodily injury and property damage coverage for owned (if any), non-owned, hired, or leased vehicles. Commercial Automobile Liability Insurance shall be written using ISO form CA 00 01 or



CITY OF TACOMA

INSURANCE REQUIREMENTS FOR CONTRACTS

equivalent. Contractor must also maintain an MCS 90 endorsement or equivalent and a CA 99 48 endorsement or equivalent if "Pollutants" are to be transported.

4.4 Workers' Compensation

4.4.1 Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, as well as any other similar coverage required for this work by applicable federal laws of other states. The Contractor must comply with their domicile State Industrial Insurance laws if it is outside the State of Washington.

4.5 Employers' Liability Insurance

Contractor shall maintain Employers' Liability coverage with limits not less than One Million Dollars (\$1,000,000) each employee, One Million Dollars (\$1,000,000) each accident, and One Million Dollars (\$1,000,000) policy limit.

4.6 Professional Liability Insurance or Errors and Omissions

Contractor and/or its subcontractor shall maintain Professional Liability or Errors and Omissions with limits of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate covering acts, errors and omissions arising out of the professional services under this Contract.

If the policy limit includes the payment of claims or defense costs, from the policy limit, the per claim limit shall be Two Million Dollars (\$2,000,000).

If the scope of such design-related professional services includes work related to pollution conditions, the Professional Liability policy shall include Pollution Liability coverage.

If provided on a "claims-made" basis, such coverage shall be maintained by policy renewals or an extended reporting period endorsement for not less than three years following the end of the Contract.

4.7 Other Insurance

Other insurance may be deemed appropriate to cover risks and exposures related to the scope of work or changes to the scope of work required by City of Tacoma. The costs of such necessary and appropriate Insurance coverage shall be borne by Contractor.

SERVICES CONTRACT

Click here for the [Contract Questionnaire Popup Quick Reference](#)

Start Questionnaire

Finalize Document

THIS CONTRACT, made and entered into effective as of the ____ day of _____, 20__ (EFFECTIVE DATE) by and between the CITY OF TACOMA, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and **[INSERT legal name of Supplier exactly as it appears in Ariba]**, (hereinafter referred to as "CONTRACTOR");

In consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

1. Scope of Services/Work

The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables consisting of [INSERT A BRIEF DESCRIPTION OF THE WORK TO BE PERFORMED] as is described in Exhibit XXXXX [A, B, ETC., if needed] attached hereto and incorporated herein.

2. Order of Precedence

To the extent there is any discrepancy or conflict between and/or amongst the terms of this Contract and Exhibit(s) _____, the controlling terms for this Contract will be interpreted in the following order of precedence, with the first listed being the most controlling, and the last listed being the least controlling: Contract, Exhibit ____, Exhibit _____. [INSERT EXHIBIT REFERENCES IN ORDER OF WHICH IS MOST CONTROLLING]

3. Changes to Scope of Work

The CITY shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

4. On Call Contracts

If the services and deliverables performed under this Contract are on an on call or as assigned basis, service and deliverables may be assigned by Task Authorization or Statements of Work, are subject to Section 9, and cannot augment any other work that the CONTRACTOR is doing for the CITY on another Contract. Actual compensation will depend upon the actual purchases made by the City during the life of this Contract and will be paid at the rates set in Exhibit A

5. Term

All services shall be satisfactorily completed on or before [INSERT CONTRACT TERMINATION DATE] and this Contract shall expire on said date unless mutually extended by a written and executed Amendment to this Contract.

6. Renewals

At CITY's sole option, the Term of this Contract may be renewed for additional [INSERT THE RENEWAL PERIOD - 1 YEAR, ETC] periods, not to exceed [INSERT THE MAXIMUM NUMBER OF RENEWAL PERIODS]. CITY will provide written notice of its intent to exercise any renewal options at least 30 days prior to the then existing Term and a written Amendment to this Contract will be mutually executed.

7. Delay

Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

8. Compensation

The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract [in accordance with OR on the basis of] [INSERT DESCRIPTION OF COMPENSATION ARRANGEMENTS – REFERENCE EXHIBIT, TIME AND MATERIALS, LUMP SUM ETC.]

9. Not to Exceed Amount

The total price to be paid by CITY for CONTRACTOR'S full and complete performance of the Scope of Work hereunder shall not exceed \$ [INSERT TOTAL AMOUNT OF CONTRACT] plus applicable taxes without a written and executed Amendment to this Contract. Said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.

In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

10. Payment

CONTRACTOR shall submit XXXXXXXX {monthly, weekly, annual, Contract milestone, etc.} invoices for services completed and/or deliverables furnished during the invoice period. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.

Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced. The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.

11. Payment Method

The City's preferred method of payment is by ePayables (Payment Plus), followed by credit card (aka procurement card), then Electronic Funds Transfer (EFT) by Automated Clearing House (ACH), then check or other cash equivalent. CONTRACTOR may be required to have the capability of accepting the City's ePayables or credit card methods of payment. The City of Tacoma will not accept price changes or pay additional fees when ePayables (Payment Plus) or credit card is used. The City, in its sole discretion, will determine the method of payment for this Contract.

12. Independent Contractor Status

The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create an employer and employee relationship. The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless stated otherwise in this Contract. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney's fees.

13. Services Warranty

The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables as expressed in the Scope of Work. In the performance of services under this Contract, the CONTRACTOR and its employees further agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals or service providers rendering the same or similar type of service. All obligations and services of the CONTRACTOR hereunder shall be performed diligently and completely according to such professional standards.

Unless a higher standard or longer periods of warranty coverage for product deliverables provided under this Contract is provided herein, CONTRACTOR agrees to correct any defect or failure of deliverables supplied under this Contract which occurs

within one year from _____ [FILL IN APPROPRIATE TIME FRAME, E.G. GO LIVE, FIRST USE, ETC]. During said warranty period, all of the costs (including shipping, dismantling and reinstallation) of repairs or corrections is the responsibility of the CONTRACTOR. If CONTRACTOR is not the manufacturer of the item of equipment, CONTRACTOR agrees to be responsible for this warranty and shall not be relieved by a lesser manufacturer's guarantee. This Contract warranty period shall be suspended from the time a significant defect is first documented by the CITY until repair or replacement by CONTRACTOR and acceptance by the CITY. In the event less than ninety (90) days remain on the warranty period (after recalculating), the warranty period shall be extended to allow for at least ninety (90) days from the date of repair or replacement and acceptance by the CITY.

14. Reliance on CITY Provided Data or Information

If the CONTRACTOR intends to rely on information or data supplied by the CITY, other CITY contractors or other generally reputable sources without independent verification, such intent shall be brought to the attention of the CITY.

15. Contract Administration

[INSERT NAME TITLE AND DEPARTMENT OF CONTRACT ADMINISTRATOR] for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.

16. Specific Personnel

If before, during, or after the execution of this Contract, CONTRACTOR represents to the CITY that certain personnel would or will be responsible for performing services and deliverables under this Contract, then the CONTRACTOR is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. This Contract provision shall only be waived by written authorization by the CITY, and on a case-by-case basis.

17. Right to Audit

During the Term of this Contract, and for six (6) years thereafter, the CITY shall have the right to inspect and audit during normal business hours all pertinent books and records of the CONTRACTOR and/or any sub-contractor or agent of CONTRACTOR that performed services or furnished deliverables in connection with or related to the Scope of Work hereunder as reasonably needed by CITY to assess performance, compliance and quality assurance under this Contract or in satisfaction of City's public disclosure obligations, as applicable.

CONTRACTOR shall, upon three (3) business days of receipt of written request for such inspection and audit from CITY, provide the CITY with, or permit CITY to make, a copy of any work-related books, accounts, records and documents, in whole or in part, as specified in such request. Said inspection and audit shall occur in Pierce County, Washington or such other reasonable location as the CITY selects. The CITY shall bear the cost of any inspection audit requested hereunder, provided, that if an inspection

audit in accordance with the foregoing provisions discloses overpricing or overcharges (of any nature) by the CONTRACTOR to the CITY in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the CITY's audit shall be reimbursed to CITY by CONTRACTOR. Any adjustments or payments that must be made as a result of any audit and inspection hereunder shall be made no later than 90 days from presentation of CITY's findings to CONTRACTOR.

CONTRACTOR shall ensure that the foregoing inspection, audit and copying rights of the CITY are a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform the Scope of Work under this Contract.

18. Records Retention

The CONTRACTOR shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters related to the performance of this Contract. Except as otherwise authorized by the CITY, the CONTRACTOR shall retain such records for a period of _____ [INSERT THE TIME THE RECORDS SHOULD BE KEPT. MOST COMMON IS 6 YEARS] years after receipt of the final payment under this Contract or termination of this Contract.

If CONTRACTOR retains any City records or data hosted in a Cloud Service. CITY shall have the ability to access its records hosted in a Cloud Service at any time during the Term of this Contract. CITY may export and retrieve its records during the Term of the Contract and, no later than 30 days from the termination of this Contract, CONTRACTOR shall export CITY records to City's custody and control.

19. Notices

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY:	CONTRACTOR:
Name:	Name:
Title:	Title:
Address:	Address:
Telephone No.:	Telephone No.:
E-mail:	E-mail:

20. Termination

Except as otherwise provided herein, the CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to CONTRACTOR.

In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein. Termination of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

21. Suspension

The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days' written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR'S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends. Suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

22. Taxes

Unless stated otherwise in Exhibit A, CONTRACTOR is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR holds CITY harmless from such costs, including attorney's fees.

If CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including by Tacoma City ordinance, and including by a court of law, CITY will deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. Any such payments shall be deducted from the CONTRACTOR's total compensation.

23. Licenses and Permits

The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30. If applicable, CONTRACTOR must have a Washington state business license.

24. Indemnification

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject

matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the sole negligence of the CITY, or its officers, agents, or employees. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

It is expressly agreed that with respect to design professional services performed by CONTRACTOR herein, CONTRACTOR's duty of indemnification, including the duty and cost to defend, against liability for damages arising out of such services or out of bodily injury to persons or damage to property shall, as provided in RCW 4.24.115 apply only to the extent of CONTRACTOR's negligence.

CONTRACTOR hereby warrants and represents CONTRACTOR is owner of any products, solutions or deliverables provided and licensed under this Contract or otherwise has the right to grant to CITY the licensed rights under this Contract, without violating the rights of any third party worldwide. CONTRACTOR shall, at its expense, defend, indemnify and hold harmless CITY and its employees, officers, directors, contractors, agents and volunteers from any claim or action against CITY which is based on a claim against CITY for infringement of a patent, copyright, trademark, or other propriety right or appropriation of a trade secret.

25. Title 51 Waiver

CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

26. Insurance

During the course and performance of the services herein specified, CONTRACTOR will maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services and deliverables provided under this Contract. The City of Tacoma Insurance Requirements documents are fully incorporated herein by reference.

Failure by City to identify a deficiency in the insurance documentation provided by Contractor or failure of City to demand verification of coverage or compliance by Contractor with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

27. Nondiscrimination

The CONTRACTOR agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The CONTRACTOR shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the

presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the event of non-compliance by the CONTRACTOR with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

28. Conflict of Interest

No officer, employee, or agent of the CITY, nor any member of the immediate family of any such officer, employee, or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes, and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR also agrees that its violation of the CITY'S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

29. City ownership of Work/Rights in Data and Publications

To the extent CONTRACTOR creates any Work subject to the protections of the Copyright Act (Title 17 U.S.C) in its performance of this Contract, CONTRACTOR agrees to the following: The Work has been specially ordered and commissioned by CITY. CONTRACTOR agrees that the Work is a "work made for hire" for copyright purposes, with all copyrights in the Work owned by CITY. To the extent that the Work does not qualify as a work made for hire under applicable law, and to the extent that the Work includes material subject to copyright, CONTRACTOR hereby assigns to CITY, its successors and assigns, all right, title and interest in and to the Work, including but not limited to, all patent, trade secret, and other proprietary rights and all rights, title and interest in and to any inventions and designs embodied in the Work or developed during the course of CONTRACTOR'S creation of the Work. CONTRACTOR shall execute and deliver such instruments and take such other action as may be required and requested by CITY to carry out the assignment made pursuant to this section. Any documents, magnetically or optically encoded media, or other materials created by CONTRACTOR pursuant to this Contract shall be owned by CITY and subject to the terms of this subsection. To the maximum extent permitted by law, CONTRACTOR waives all moral rights in the Work. The rights granted hereby to CITY shall survive the expiration or termination of this Contract. CONTRACTOR shall be solely responsible for obtaining releases for the performance, display, recreation, or use of copyrighted materials.

30. Public Disclosure

This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for

such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and CONTRACTOR has complied with the requirements herein to mark all content considered to be confidential or proprietary, CITY agrees to provide CONTRACTOR ten (10) days written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, including any damages, attorneys fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the "Notices" provision herein.

31. Confidential or Proprietary Records Must be Marked

If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the notice requirements above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

32. Duty of Confidentiality

CONTRACTOR acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the CITY.

Except for disclosure of information and documents to CONTRACTOR's employees, agents, or subcontractors who have a substantial need to know such information in connection with CONTRACTOR's performance of obligations under this Contract, the CONTRACTOR shall not without prior written authorization by the CITY allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.

CONTRACTOR shall inform its employees, agents, and subcontractors of the confidentiality obligations under this Contract and instruct them so as to ensure such obligations are met. If so requested by the CITY, the CONTRACTOR further agrees to require all such individuals and entities performing services pursuant to this Contract to execute a Confidentiality and Non-Disclosure Agreement in a form acceptable to CITY.

This Section shall survive for six (6) years after the termination or expiration of this Contract.

CITY is required to provide notice of the Red Flags Rules published by the Federal Trade Commission in Title 16 Code of Federal Regulations, Part 681 ("Rules") to all entities that receive confidential or otherwise protected personal information of CITY's customers. Terms in quotations in this Section refer to defined terms contained in the "Rules." CONTRACTOR is, as to "Covered Accounts" of CITY for which CONTRACTOR

performs activities under the Contract, a "Service Provider." "Service Provider" will perform in accordance with its reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft and will promptly report to CITY any specific "Red Flag" incidents detected as to "Covered Accounts" of CITY and upon request by CITY will respond to or reasonably assist CITY in responding reported "Red Flags." This Section shall survive for six (6) years after the termination or expiration of this Contract.

33. Approval for Release of Information Related to Contract

If requested by CITY, CONTRACTOR shall not release any information or documentation concerning the work under this Contract or any part thereof for marketing, advertising, or other commercial activities or publication including, but not limited to, news releases or professional articles without CITY's prior written approval. CONTRACTOR may submit at any time for review and approval a generic abstract describing the component parts of the completed Scope of Services ("Project Abstract"). After receiving written approval of the Project Abstract from the CITY, the CONTRACTOR may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.

This Section shall survive for six (6) years after the termination or expiration of this Contract.

34. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

35. Miscellaneous Provisions

Governing Law and Venue

Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration, or litigation arising out of this Contract.

Assignment

The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.

No Third Party Beneficiaries

This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

Waiver

A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.

Severability and Survival

If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.

Entire Agreement

This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

Modification

No modification or amendment of this Agreement shall be effective unless set forth in a written and executed Amendment to this Contract.

Direct Solicitation and Negotiation

For service contracts valued \$25,000 or less the City signature authorizes waiver of competitive solicitation by "Direct Solicitation and Negotiation" of professional and personal services in accordance with Tacoma Municipal Code 1.06.256 and the Purchasing Policy Manual.

IN WITNESS WHEREOF, the Parties hereto have accepted and executed this Contract, as of the Effective Date stated above, which shall be Effective Date for bonding purposes as applicable. The undersigned Contractor representative, by signature below, represents and warrants they are duly authorized to execute this legally binding Contract for and on behalf of Contractor.

CITY OF TACOMA:
By: _____

CONTRACTOR:
By: _____

(City of Tacoma use only - blank lines are intentional)

Director of Finance: _____

City Attorney (approved as to form): _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____